STATE TAX COMMISSION

In the Matter of Applications

of

INTERNATIONAL HARVESTER COMPANY (DEL.) : (Successor to International Harvester Company (N.J.):

for revision or refund of franchise taxes under Article 9-A for the fiscal years ended October 31, 1960 through October 31, 1964, and license fee based on the fiscal year ended October 31, 1960 under Article 9 of the tax law.

International Harvester Company (Del.) having filed applications for revision or refund, and a hearing having been held on February 21, 1973 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, State Campus, Albany, N. Y. 12227, at which hearing R. H. Garrison, Esq. of counsel, and L. A. Osgood, general tax accountant of the corporation appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

Jersey on September 19, 1918, began doing business in New York on September 30, 1918. It filed a Certificate of Termination with the New York Secretary of State indicating its existence was terminated on March 17, 1966 by merger into International Harvester Company, incorporated in Delaware on December 22, 1965. Franchise tax returns were filed on a combined basis with certain wholly-owned subsidiaries.

(2) Based on a field audit examination, the Corporation
Tax Bureau assessed additional taxes and license fee as follows:

Article 9-A

Fiscal Year Ended	Added Franchise Tax
10/31/60	\$17,667.60
10/31/61	7,867.62
10/31/62	9,669.08
10/31/63	6,359.74
10/31/64	7,372.94

Article 9

Fiscal Year Ended Added License Fee 10/31/60 5,315.50

The above amounts are in dispute only with respect to that portion based on treatment of certain short-term notes. The Corporation Tax Bureau treated such notes as investment capital and the income therefrom as investment income. The taxpayer contends that the notes should be treated as business capital and the income therefrom as business income. The short-term notes at issue represent obligations of such finance corporations as Sears Roebuck Acceptance Corp., General Electric Credit Corp., Commercial Credit Corp., C.I.T. Financial Corp., etc. The notes were acquired from banks or by direct purchase from the respective finance corporations.

- (3) Section 208 of the tax law reads in part:
 - "5. The term 'investment capital' means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular order of business . . .
 - "6. The term 'investment income' means income, including capital gains in excess of capital losses, from investment capital, . . .
 - "7. The term 'business capital' means all assets other than subsidiary capital, investment capital, .
- (4) Section 3.31c of Ruling of the State Tax Commission issued March 14, 1962 reads as follows:

"The 'other securities' referred to in the definition of investment capital are limited to securities issued by governmental bodies and securities issued by corporations, of a like nature as stocks and bonds, which are customarily sold in the open market or on a recognized exchange, designed as a means of investment, and issued for the purpose of financing corporate enterprises and providing a distribution of rights in or obligations of, such

enterprises. Such 'other securities' thus include debentures, notes and certificates of indebtedness which have many of the essential characteristics of bonds, and certificates of interest and other instruments evidencing proprietorship rights in corporate enterprises which have many of the essential characteristics of stock. They do not include corporate obligations not commonly known as securities, such as real property or chattel mortgages, contracts of sale, purchase money obligations, short-term notes, bills of lading, bills of exchange and other commercial instruments."

The State Tax Commission herby

DETERMINES:

- (A) The reference to short-term notes in the last sentence of (4) above is intended to exclude from investment capital short-term notes acquired by a taxpayer as a result of its business operations, such as notes received in payment for goods sold or services rendered. The short-term notes in this case are not of that character and qualify as 'other securities' in (4) above and therefore constitute investment capital, as the notes were issued for the purpose of financing the activities of the issuers, were designed as a means of investment and were purchased from banks or direct from the issuers. Accordingly, the income from the notes was properly classified as investment income and allocated by the investment allocation percentage.
- (B) The added franchise taxes and license fee as shown at (2) above are affirmed as assessed, together with statutory charges as prescribed in Section 213 of Article 9-A of the tax law.

Dated: Albany, New York

this 21st of August 1974.

STATE TAX COMMISSION

President

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Commissioner

Commissioner

STATE TAX COMMISSION

In the Matter of Petitions

of

INTERNATIONAL HARVESTER COMPANY (DEL.)

(Successor to International Harvester Company (N.J.))

for redetermination of deficiencies of
franchise tax under Article 9-A of the

for redetermination of deficiencies of franchise tax under Article 9-A of the tax law for the fiscal years ended October 31, 1965 and October 31, 1966, and deficiency of license fee under Article 9 based on the fiscal year ended October 31, 1966

International Harvester Company (Del.) having filed petitions for redetermination of deficiencies, and a hearing having been held on February 21, 1973 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, State Campus, Albany, N.Y. 12227, at which hearing R. H. Garrison, Esq. of counsel, and L. A. Osgood, general tax accountant of the corporation appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

- (1) International Harvester Company, incorporated in New Jersey on September 19, 1918, began doing business in New York on September 30, 1918. It filed a Certificate of Termination with the New York Secretary of State indicating its existence was terminated on March 17, 1966 by merger into International Harvester Company, incorporated in Delaware on December 22, 1965. Franchise tax returns were filed on a combined basis with certain whollyowned subsidiaries.
- (2) Based on a field audit examination, the Corporation

 Tax Bureau issued notices of deficiency for franchise taxes and

 license fee as follows:

Article 9-A

Fiscal Year Ended

Deficiency of Franchise Tax

10/31/65 10/31/66

\$5,793.26 1,120.74

Article 9

Deficiency of License Fee Based on the Fiscal Year Ended 10/31/66

Issued par value stock	565,240,280.00
License fee allocation percentage	1.5339%
Par value stock allocated to N.Y.	8,670,221.00
License fee at 1 mills	10,837.78
Previous payment	-0-
License fee deficiency	10.837.78

The above deficiencies of franchise tax are in dispute only with respect to that portion based on treatment of certain short-term notes. The Corporation Tax Bureau treated such notes as investment capital and the income therefrom as investment income. The taxpayer contends that the notes should be treated as business capital and the income therefrom as business income. The short-term notes at issue represent obligations of such finance corporations as Sears Roebuck Acceptance Corp., General Electric Credit Corp., Commercial Credit Corp., C.I.T. Financial Corp., etc. The notes were acquired from banks or by direct purchase from the respective finance corporations.

The deficiency of license fee is in dispute with respect to (1) treatment of the short-term notes indicated above as investment capital and (2) the taxpayer claims that the successor corporation, International Harvester Company (Del.), should have been given credit for the \$24,578.53 license fee payments previously made by the predecessor corporation, International Harvester Company (N.J.), which would result in no deficiency of license fee.

- (3) Section 208 of the tax law reads in part:
 - "5. The term 'investment capital' means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business.

. : :

- "6. The term 'investment income' means income, including capital gains in excess of capital losses, from investment capital, . . .
- "7. The term 'business capital' means all assets other than subsidiary capital, investment capital, . . ."
- (4) Section 3.31c of Ruling of the State Tax Commission issued March 14, 1962 reads as follows:

"The 'other securities' referred to in the definition of investment capital are limited to securities issued by governmental bodies and securities issued by corporations, of a like nature as stocks and bonds, which are customarily sold in the open market or on a recognized exchange, designed as a means of investment, and issued for the purpose of financing corporate enterprises and providing a distribution of rights in, or obligations of, such enterprises. Such 'other securities' thus include debentures, notes and certificates of indebtedness which have many of the essential characteristics of bonds, and certificates of interest and other instruments evidencing proprietorship rights in corporate enterprises which have many of the essential characteristics of stock. They do not include corporate obligations not commonly known as securities, such as real property or chattel mortgages, contracts of sale, purchase money obligations, short=term notes, bills of lading, bills of exchange and other commercial instruments."

(5) Section 181 of Article 9 of the tax law reads in part:

". . . Every foreign corporation . . . doing business in this state, shall pay a license fee of one-eighth of one per centum on its issued par value capital stock employed within this state . . . for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state."

There is no provision in Section 181 for permitting a credit to a successor corporation of a license fee payment previously made by a predecessor corporation.

The State Tax Commission hereby DECIDES:

(A) The reference to short-term notes in the last sentence of (4) above is intended to exclude from investment capital short-term notes acquired by a taxpayer as a result of its business operations, such as notes received in payment for goods sold or services rendered. The short-term notes

in this case are not of that character and qualify as 'other securities' in (4) above and therefore constitute investment capital, as the notes were issued for the purpose of financing the activities of the issuers, were designed as a means of investment and were purchased from banks or direct from the issuers. Accordingly, the income from the notes was properly classified as investment income and allocated by the investment allocation percentage.

- (B) The license fee prescribed in Section 181 of the tax law is imposed on each separate corporate entity, and each such corporation is entitled to a credit only for previous payments made against its own license fee liability. Since International Harvester Company (Del.) was incorporated on December 22, 1965 and has made no previous payment, it is not entitled to any credit. The payments aggregating \$24,578.53 were applicable to the license fee liability of International Harvester Company (N. J.).
- (C) The notices of deficiency set forth at (2) above are affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York this 21st of August 1974.

STATE TAX COMMISSION

President

commissioner

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Commissioner



Date	1/6/83

To <u>Commissioner Bouchard</u>

Re: International Harvester

Unfortunately, the Commission decision doesn't identify the short-term notes. Attached is that decision and the Court decision.

Michael Alexander Secretary to the State Tax Commission

M-75.1

58 A.D.2d 125

In the Matter of INTERNATIONAL HAR-VESTER COMPANY (a Delaware Corporation), Successor to International Harvester Company (a New Jersey Corporation), Petitioner,

STATE TAX COMMISSION, Respondent.

Supreme Court, Appellate Division, Third Department.

June 23, 1977.

Corporation brought proceeding to review determination of the State Tax Commission sustaining corporation franchise tax and license fee assessments and denying credit for license fees paid by a predecessor corporation. Following transfer by order of the Supreme Court at Special Term, Albany County, the Supreme Court, Appellate Division, Main, J., held that: (1) foreign corporation was not entitled to credit on its license fees for license fees paid by another foreign corporation which had been absorbed by it in merger; but (2) under rules of State Tax Commission, short-term notes were not "other securities" and thus income therefrom was not investment income for purposes of computing the corporation franchise tax assessment of corporation holding the same.

Modified and confirmed.

1. Statutes ≈ 245 Taxation ≈ 251

Taxpayer seeking relief in the nature of a tax exemption must carry heavy burden and be able to point to some provision of law plainly giving the exemption; but statute, and regulations promulgated thereunder, levying a tax should be interpreted as ordinary person reading it would interpret it and construed most strongly against the government and in favor of the citizen.

2. Corporations 648

Foreign corporation was not entitled to credit on its license fees for license fees paid by another foreign corporation which had been absorbed by it in merger. Tax Law §§ 180, 181; 1 McKinney's Consol. Laws, Statutes, § 240.

3. Taxation ⇐= 319(1)

The State Tax Commission is bound by its own rules.

4. Taxation \$\sim 382\$

Under rules of the State Tax Commission, short-term notes were not "other securities" and thus income therefrom was not investment income for purposes of computing the corporation franchise tax assessment of corporation holding the same. Tax Law § 208, subd. 5.

See publication Words and Phrases for other judicial constructions and definitions.

De Graff, Foy, Conway & Holt-Harris, Albany (Michael F. Daly, Albany, of counsel), for petitioner.

Louis J. Lefkowitz, Atty. Gen., Albany (Francis V. Dow and Ruth Kessler Toch Albany, of counsel), for respondent.

Before KANE, J. P., and MAHONEY, MAIN, LARKIN and HERLIHY, JJ.

MAIN, Justice.

On December 22, 1965, petitioner, International Harvester Company, was organized under the laws of the State of Delaware as International Harvester Corporation, a wholly-owned subsidiary of a New Jersey corporation, International Harvester Company. Pursuant to a merger agreement, the New Jersey corporation was thereafter merged into petitioner on March 16, 1966, with the latter corporation surviving and assuming the name International Harvester Company. On March 17, 1966, petitioner commenced doing business in New York State and a Certificate of Termination was filed with the New York Secretary of State by the former New Jersey corporation.

The instant pro corporation franc license fee liabili predecessor corpor through 1966, a lenges notices of it received from r questions are pre wit: (1) did respon tion that certain chased by petition as that term is section 203 of the that income dericonsidered "invest "business income" tax liability wou and (2) is petition ration after a sta eign corporation against its license 131 of the Tax previously paid f predecessor New

[1, 2] Consider fee issue, we find mination of petiti confirmed. On the claiming a credit f absorped New Je and, thus, is seeki a tax exemption. ediy carry a heav point to some pro ing the exemption York State Tax C 371 N.Y.S.2d 715, 339; People ex re v. Coleman, 135 1022). This it has though a domesti merger is in effec tion for any such an absorbed do: Law, \$ 180), the c ing with license tions Tax Law. § for such a credit logical inference Legislature did no tions, such as pet the claimed credit of N.Y., Book 1,

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MAHONEY IY, JJ.

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The instant proceedings center upon the corporation franchise tax and corporation license fee liabilities of petitioner and its predecessor corporation for fiscal years 1960 through 1966, and petitioner here challenges notices of deficiency therefor which it received from respondent. Basically, two questions are presented for our review, to wit: (1) did respondent err in its determination that certain short-term notes purchased by petitioner were "other securities" as that term is used in subdivision 5 of section 208 of the Tax Law with the result that income derived therefrom would be considered "investment income" rather than "business income" and petitioner's franchise tax liability would thereby be increased, and (2) is petitioner, as the surviving corporation after a statutory merger of two foreign corporations, entitled to a credit against its license fee liability under section 181 of the Tax Law for the license fees previously paid for the year 1966 by its predecessor New Jersey corporation.

[1,2] Considering initially the license fee issue, we find that respondent's determination of petitioner's deficiency must be confirmed. On this question, petitioner is, claiming a credit for license fees paid by the absorbed New Jersey corporation for 1966 and, thus, is seeking relief in the nature of a tax exemption. As such, it must concededly carry a heavy burden and be able to point to some provision of law plainly giving the exemption (Matter of Grace v. New York State Tax Comm., 37 N.Y.2d 193, 196, 571 N.Y.S.2d 715, 718, 332 N.E.2d 886, 888-889; People ex rel. Sygs. Bank New London v. Coleman, 135 N.Y. 231, 234, 31 N.E. 1022). This it has been unable to do. Even though a domestic corporation surviving a merger is in effect credited on its organization for any such taxes previously paid by an absorbed domestic corporation (Tax Law, § 180), the corresponding statute dealing with license fees on foreign corporations (Tax Law, § 181) contains no provision for such a credit. Accordingly, the only logical inference to be drawn is that the Legislature did not intend foreign corporations, such as petitioner, to be entitled to the claimed credit (McKinney's Cons. Laws of N.Y., Book 1, Statutes, § 240).

[3,4] With regard to the alleged franchise tax deficiencies, however, we reach a contrary result and find that respondent erroneously treated petitioner's income from the subject short-term notes as "investment income" and, therefore, that the resultant tax deficiencies assessed must be annulled. In this instance we are not being asked by petitioner for a tax credit or exemption. Instead, we are merely interpreting a statute and regulations promulgated thereunder levying a tax, which "should be interpreted as the ordinary person reading it would interpret it" (Howitt v. Street & Smith Publications, 276 N.Y. 345, 351, 12 N.E.2d 435, 437) and "construed most strongly against the government and in favor of the citizen" (People ex rel. Mutual Trust Co. v. Miller, 177 N.Y. 51, 57, 69 N.E. 124, 126). Here, by the express terms of section 3.31(c) of the Ruling of respondent issued March 14, 1962 (20 NYCRR 3.31[c]), "short-term notes" are specifically excluded from the class of "other securities" as that term is utilized in subdivision 5 of section 208 of the Tax Law. Moreover, that same ruling limits "other securities" to, inter alia, securities issued by corporations and governmental bodies "of a like nature of stocks and bonds, which are customarily sold in the open market or on a recognized exchange". Obviously, the "short-term notes" purchased by petitioner do not meet these criteria for "other securities" as established by respondent, and, at the very least, respondent is bound by its own rules (Matter of Conlon v. McCoy, 27 A.D.2d 280, 278 N.Y.S.2d 449, mod. on other grounds 22 N.Y.2d 356, 292 N.Y.S.2d 857, 239 N.E.2d 614; Matter of Mendelson v. Finegan, 253 App.Div. 709, 1 N.Y.S.2d 648, affd. sub nom. Matter of Mendelson v. Kern, 278 N.Y. 568, 16 N.E.2d 106) and the citizenry should be able to use said rules as a guide in formulating a course of conduct. Such being the case, the franchise tax deficiencies assessed against petitioner must be annulled.

The determination and decision should be modified, by annulling so much thereof as

assess franchise tax deficiencies, and, as so modified, confirmed, without costs.

Determination and decision modified, by annulling so much thereof as assess franchise tax deficiencies, and, as so modified, confirmed, without costs.

KANE, J. P., and MAHONEY, LARKIN and HERLIHY, JJ., concur.



58 A.D.2d 120

In the Matter of L. ALDAZABAL et al., on behalf of themselves and all others similarly situated, Respondents,

v.

Hugh CAREY, as Governor of the State of New York, et al., Appellants.

Supreme Court, Appellate Division, Third Department.

June 23, 1977.

Petitioners, who had been employed by office of parks and recreation in classified position of seasonal park patrolmen, brought Article 78 proceeding seeking reinstatement in such position, rather than in newly created nonclassified position of parks and recreation assistants. The Supreme Court, Special Term, Albany County, Robert C. Williams, J., granted application, and defendants appealed. The Supreme Court, Appellate Division, Mahoney, J., held that in view of economic burden of complying with standards set by municipal police training council it was not improper for the office of parks and recreation to abolish the competitive position and replace it with a substantially similar noncompetitive position, especially since there was no desire to hire different persons to do the same work and (2) even if purpose of amendment making MPTC standards binding on park commission police officers was to require all

park policemen to have MPTC training there was nothing preventing the office of parks and recreation from concluding that there was no need in state parks for a seasonal force of fully trained officers to enforce the general criminal law.

Reversed.

1. Officers \$\ins 11.2\$

Since on elimination of classified position of seasonal park patrolmen and adoption of nonclassified position of parks and recreation assistant the petitioners, who previously had been employed as seasonal patrolmen, were given priority for the new positions they were not aggrieved by the noncompetitive classification and could not be heard to complain that the Constitution precluded classification of the new position as noncompetitive because it could practicably be filled by competitive examination. Const. art. 5, § 6.

2. Officers \$\infty\$69.11

Competitive class position of seasonal park patrolman could properly be abolished and replaced by substantially similar non-competitive position of parks and recreation assistant where change was necessitated by economic reasons, specifically, burden which would be imposed if seasonal patrolmen were required to satisfy requirements set by the municipal police training council, and classified position was not abolished merely because the employer wished to hire different persons to do the same work. Executive Law §§ 835, subds. 6, 7, 840.

3. Officers ← 11.2

Reclassifying position of seasonal park patrolman as parks and recreation assistant, a nonclassified position, did not thwart intent of amendment subjecting park commission police to municipal police training council standards since even if intent of amendment was to require park commission police to have MPTC training it was not shown that position of park patrolman met definition of "municipal police officer" and, hence, nothing prevented office of parks and recreation from concluding that there was no need for a seasonal force of fully

trained off inal law.

Louis J.
Driscoll and counsel), for Rowley & Babiskin. A

Before C HONEY, M

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